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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re J.A. et al., Persons Coming Under the
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

M.A.,

Defendant and Appellant.

F057878

(Super. Ct. Nos. JD116919 &
JD116920)

OPINION

APPEAL from a judgment of the Superior Court of Kern County. Peter A.
Warmerdam, Juvenile Court Referee.

Hana B. Balfour, under appointment by the Court of Appeal, for Defendant and
Appellant.

Theresa A. Goldner, County Counsel, and Susan M. Gill, Deputy County Counsel,
for Plaintiff and Respondent.

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M.A. (Father), father of J. and A., appeals from the juvenile court's findings and orders made at the 12-month review hearing. Father contends (1) the court erred in finding a substantial risk of detriment to A. if she were returned to his care, (2) he was denied reasonable reunification services with regard to visitation with J., and (3) the juvenile court erred by delegating authority to J. to decide whether visitation with Father would occur. We will affirm.

FACTS AND PROCEDURAL BACKGROUND

As with so many child dependency cases, the history of contact between the Department of Human Services (the Department) and Father's family is extensive and detailed. We are confident, however, that in this case we need not chronicle every act and omission. Thus, we provide a brief summary.¹

Father had previous contacts with the Department regarding a filthy home and the children's failure to attend school. Some of the referrals were not investigated because the family could not be located. On December 15, 2007, Father's home was found to be filthy, littered with trash and debris, and without working utilities. J. and A. were released to a relative until Father could bring the home up to community standards. Father, however, retrieved the children without doing so. On February 7, 2008, the children were detained. At this point, J. was 17 years old and A. was 14 years old.

On February 11, 2008, petitions were filed on behalf of J. and A. pursuant to Welfare and Institutions Code section 300, subdivision (b),² alleging that the children had suffered or were at a substantial risk of suffering serious physical harm or illness as a result of Father's failure to provide them with adequate shelter.

¹ We note that a more detailed history of the early phase of this case is recounted in our unpublished opinion in case No. F055371, filed on November 13, 2008.

² All statutory references are to the Welfare and Institutions Code unless otherwise noted.

A. wanted to return to Father, but J. generally refused to even visit with him. Father visited with A., but missed several visits and often canceled them with A. directly. Taking the parental role, A. often encouraged Father to cooperate with the Department, but he remained aggressive and confrontational with the social workers. He consistently refused to allow any social worker into his home to determine whether it was suitable for A.'s return. He yelled, used foul language, and called the social workers various names, including "a bunch of Nazis [*sic*]" and "[a] terrorist organization."

At the May 21, 2009, 12-month review hearing, a Department worker testified that Father had submitted photographs allegedly of the interior of his home. She testified that the home in the photographs appeared to be suitable and appropriate for children. Another worker also testified she saw nothing in the photographs that posed a substantial risk to the children's safety, but she had never been inside the home so she could not verify that the photographs portrayed Father's home.

A. testified she still wanted to live with Father. J., on the other hand, testified his life had improved since he was removed from Father and he had no desire to live with him.

The court found that Father had made minimal progress toward alleviating or mitigating the causes for the children's placement out of the home. He had not made acceptable effort and had not availed himself of the provided services to facilitate return of the children. The court found that a return of the children to Father would create a substantial risk of detriment to their safety and protection.

As for J., the court terminated reunification services and ordered monthly supervised visits. The court informed J. that he would not be required to visit if he chose not to. As for A., the court found a substantial probability she would be returned to Father's custody and it extended services. The court ordered Father to participate in services, make his home available for inspection, and participate in and complete a parenting and neglect course. If he failed to do so, he would not get A. back.

DISCUSSION

I. Substantial Risk of Detriment

Father contends the juvenile court erred at the 12-month review hearing in finding a substantial risk of detriment to A. if she were returned to his care.

Under section 366.21, subdivision (f), which governs 12-month review hearings in dependency proceedings, “[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” This statutory requirement of a substantial risk of detriment sets a “fairly high” standard. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.) At this point in the dependency process, the presumption is that the child will be returned. As a result, the burden is on the Department to demonstrate that a substantial risk of detriment exists, precluding reunification. (*Ibid.*) “The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker’s report and recommendations ..., shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided, ... and shall make appropriate findings.” (§ 366.21, subd. (f).) Prima facie evidence establishes a rebuttable presumption that return would be detrimental to the child. (Evid. Code, § 602: *In re Heather B.* (1992) 9 Cal.App.4th 535, 560.)

A dependency court’s decision at a review hearing on the question whether it would be detrimental to return a child to his or her parent’s care is reviewed under the substantial evidence test. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 965, 974.) The reviewing court’s task is to “determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the

trier of fact.”” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Conflicts in the evidence and in reasonable inferences drawn from the evidence are resolved in favor of affirming the challenged order and credibility of witnesses is a matter for the trier of fact. (*Ibid.*) ““The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.”” (*Id.* at p. 1394.)

In this case, we have no difficulty concluding that ample evidence supported the juvenile court’s finding that returning A. to Father’s care would pose a substantial risk of detriment to her. Not only did Father fail to participate in his court-ordered programs, he appears to have done almost everything in his power to defy and frustrate the Department’s efforts. The only thing he appears to have complied with to any extent is visitation with A., and even that he did inconsistently and unpredictably. He repeatedly lost his temper, resisted the Department’s attempts, and flouted its authority. He constantly refused to allow the Department into his home to determine whether it was suitable for the possible return of A. He presented photographs allegedly of his home’s interior, but refused to permit their verification. Put simply, this was not a close case. Father did not rebut the presumption that return of A. to him would create a substantial risk of detriment. Substantial evidence supported the juvenile court’s finding.

II. Visitation with J.

Father contends he was denied reasonable reunification services with regard to visitation with J. Father also asserts that the juvenile court erred by delegating authority to J. to decide whether visitation with Father would occur. Even assuming these errors occurred, we conclude the issues are moot because J. has turned 18 years old during the pendency of this appeal. We are aware of no authority that would allow the juvenile court (assuming it maintains jurisdiction over J.) to force J., as an adult, to visit his father. The court noted this reality at the review hearing. For this reason, we can provide no effective relief on remand and the issues regarding visitation with J. are moot. (See *In re Audrey D.* (1979) 100 Cal.App.3d 34, 39, fn. 4. [we will not review questions that are

moot and only of academic importance; no substantial rights can be affected by the decision either way]; *In re Diana G.* (1992) 10 Cal.App.4th 1468, 1483 [issue of visitation moot following termination of parental rights].)

DISPOSITION

The juvenile court's finding and orders are affirmed.

Kane, J.

WE CONCUR:

Wiseman, Acting P.J.

Dawson, J.